



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-357-820

Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) preliminarily determines that biodiesel from Argentina is being, or is likely to be, sold in the United States at less than fair value. The period of investigation is January 1, 2016, through December 31, 2016.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: David Lindgren, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3870.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on April 19, 2017.¹ For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.² A list of topics

¹ *See Biodiesel from Argentina and Indonesia: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 18428 (April 19, 2017) (*Initiation Notice*).

² *See* Memorandum to Gary Tavernman, Deputy Assistant Secretary for Antidumping and Countervailing Duty

included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the Department's main building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is biodiesel from Argentina. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,³ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁴ No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*. Therefore, the Department is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*. *See* the scope in Appendix I to this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. The Department has calculated export prices in accordance with section 772(a) of the Act.

Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, from James Maeder, Senior Director for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Biodiesel from Argentina," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

³ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁴ *See Initiation Notice*.

Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances, in Part

In accordance with section 733(e) of the Act and 19 CFR 351.206, the Department preliminarily finds that critical circumstances exist for LDC Argentina S.A. (LDC) and “all other” producers or exporters not individually examined. We preliminarily find that critical circumstances do not exist for Vicentin S.A.I.C. (Vicentin) and certain affiliated companies (collectively, the Vicentin Group).⁵ For a full description of the methodology and results of the Department’s critical circumstances analysis, *see* the Preliminary Decision Memorandum.

Particular Market Situation

On August 2, 2017, the National Biodiesel Board Fair Trade Coalition (petitioner) filed a particular market situation (PMS) allegation with respect to the respondents’ home market sales prices and reported costs of production.⁶ The petitioner asserts that a PMS exists in Argentina because the Government of Argentina (GOA) sets both mandatory monthly sales prices and sales quotas for biodiesel producers, and restrains the exports of soybeans with an export tax, thereby depressing the respondents’ reported raw material costs in Argentina. The petitioner argues that the Department should disregard the respondents’ home market sales based on a finding that they are significantly distorted by government intervention. The petitioner also urges the Department

⁵ Vicentin Group consists of the following companies: Vicentin, Renova S.A., Oleaginosa Moreno Hermanos S.A., Molinos Agro S.A., Patagonia Energia S.A., VFG Inversiones y Actividades Especiales S.A., Vicentin S.A.I.C. Sucursal Uy, Trading Company X, and Molinos Overseas Commodities S.A. *See* Preliminary Decision Memorandum at “Affiliation and Collapsing.”

⁶ *See* Petitioner’s Letter, “Biodiesel from Argentina: Petitioner’s Particular Market Situation Allegation Regarding Respondents’ Home Market Sales and Costs of Production,” dated August 2, 2017 (PMS Allegation).

to make an adjustment for the price of soybeans purchased from domestic suppliers to address the distorted Argentine market for soybeans.

The respondent Vicentin argues that the Department has a preference for using home market prices and that the standard for finding a PMS and rejecting home market prices is that the government control must be so extensive that pricing is not longer profitable.⁷ Vicentin contends the GOA's prices allow for a return on capital. Furthermore, Vicentin asserts that the claim that the export tax on soybeans is distortive is speculative and it cites studies finding that the elimination of the export tax would have a negligible effect on domestic soybean prices. Finally, Vicentin contends that the Department has previously made clear that a single subsidized raw material is insufficient to conclude that a PMS exists.

Based on the facts on the record, the Department preliminarily finds that the GOA's regulation of the domestic biodiesel market amounts to a PMS in Argentina that renders the home market prices of the Vicentin Group and LDC outside the ordinary course of trade. Therefore, the Department is preliminarily relying on constructed value as the basis for NV in this investigation for both respondents. The Department also preliminarily finds that a PMS exists in Argentina with regard to the price of soybeans as a component of the cost of manufacturing (COM) for biodiesel. Therefore, the Department has adjusted the Vicentin Group's and LDC's COM to account for the distorted cost of soybeans. For a full description of the methodology underlying the PMS determination, *see* the Preliminary Decision Memorandum.

⁷ See Vicentin's Affirmative Pre-Preliminary Comments at 5.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that, in the preliminary determination, the Department shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding rates that are zero, *de minimis*, or determined entirely on facts available under section 776 of the Act.

In this investigation, the Department calculated estimated weighted-average dumping margins for LDC and the Vicentin Group that are not zero, *de minimis*, or based entirely on facts otherwise available. The Department calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.⁸

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

⁸ With two respondents under examination, the Department normally calculates (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. The Department then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was available, the Department based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, please see Memorandum to the File "Antidumping Duty Investigation of Biodiesel from Argentina: Preliminary Determination Calculation for the 'All-Others' Rate," October 19, 2017 (Preliminary All-Others Rate Memorandum).

Exporter or Producer	Estimated Weighted-Average Dumping Margin (percent)	Cash Deposit Rate (Adjusted for Subsidy Offset(s)) (percent)
LDC Argentina S.A.	54.36	54.36
Vicentin S.A.I.C. ⁹	70.05	69.91 ¹⁰
All-Others	63.00	62.92 ¹¹

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. Furthermore, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin, adjusted for export subsidy offset(s), as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins, adjusted for export subsidy offset(s), determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin, adjusted for export subsidy

⁹ The Department preliminarily determined that Vicentin S.A.I.C., and companies Renova S.A., Oleaginosa Moreno Hermanos S.A., Molinos Agro S.A., Patagonia Energia S.A., VFG Inversiones y Actividades Especiales S.A., Vicentin S.A.I.C. Sucursal Uy, Trading Company X, and Molinos Overseas Commodities S.A. are a single entity. See Preliminary Decision Memorandum at “Affiliation and Collapsing.”

¹⁰ See Vicentin Preliminary Analysis Memorandum.

¹¹ See Preliminary All-Others Rate Memorandum.

offset(s), established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin, adjusted for export subsidy offset(s).

The Department normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion CVD proceeding in accordance with section 772(c)(1)(C), when CVD provisional measures are in effect. Accordingly, where the Department preliminarily made an affirmative determination for countervailable export subsidies, the Department has offset the estimated weighted-average dumping margin by the appropriate CVD rate. In the preliminary determination in the companion CVD investigation, the Department found that Vicentin had a countervailable export subsidy while LDC did not.¹² Therefore, we preliminarily determine to adjust the cash deposit rate for the Vicentin Group and make no adjustments to the cash deposit rate for LDC in the Preliminary Determination.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. The Department preliminarily finds that critical circumstances exist for imports of subject merchandise produced or exported by LDC and “all other” exporters and producers not individually examined. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of shipments of subject merchandise from the

¹² See *Biodiesel from Argentina: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination, in Part*, 82 FR 40748 (August 28, 2017), and accompanying Preliminary Decision Memorandum.

producer(s) or exporter(s) identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹³ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

¹³ See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that the Department will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, the Department will make its final determination no later than 75 days after the signature date of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 19, 2017

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

Appendix I

Scope of the Investigation

The product covered by this investigation is biodiesel, which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, including biologically-based waste oils or greases, and other biologically-based oil or fat sources. The investigation cover biodiesel in pure form (B100) as well as fuel mixtures containing at least 99 percent biodiesel by volume (B99). For fuel mixtures containing less than 99 percent biodiesel by volume, only the biodiesel component of the mixture is covered by the scope of the investigation.

Biodiesel is generally produced to American Society for Testing and Materials International (ASTM) D6751 specifications, but it can also be made to other specifications. Biodiesel commonly has one of the following Chemical Abstracts Service (CAS) numbers, generally depending upon the feedstock used: 67784-80-9 (soybean oil methyl esters); 91051-34-2 (palm oil methyl esters); 91051-32-0 (palm kernel oil methyl esters); 73891-99-3 (rapeseed oil methyl esters); 61788-61-2 (tallow methyl esters); 68990-52-3 (vegetable oil methyl esters); 129828-16-6 (canola oil methyl esters); 67762-26-9 (unsaturated alkylcarboxylic acid methyl ester); or 68937-84-8 (fatty acids, C12-C18, methyl ester).

The B100 product subject to the investigation is currently classifiable under subheading 3826.00.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), while the B99 product is currently classifiable under HTSUS subheading 3826.00.3000. Although the HTSUS subheadings, ASTM specifications, and CAS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

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 - A. Vicentin Group
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 - A. Background
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[FR Doc. 2017-23601 Filed: 10/30/2017 8:45 am; Publication Date: 10/31/2017]